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Attorneys for Defendant

Bankrate, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BANXCORP,

Plaintiff,

vs.

BANKRATE, INC.,

Defendant.

Civil Action No. 07-3398

Hon. Esther Salas, U.S.D.J.

**DECLARATION OF
R. SCOTT THOMPSON, ESQ.**

I, R. Scott Thompson, Esq., of full age, being duly sworn according to law, do depose and state as follows:

1. I am an Attorney-at-Law of the State of New Jersey and a Member of Lowenstein Sander PC, attorneys for Defendant Bankrate, Inc. in the above referenced matter.

2. I make this Declaration in support of Defendant Bankrate's Motion to Dismiss Portions of the Fifth Amended Complaint.

3. True and correct excerpts of the transcript of the parties' January 28, 2011 in-person hearing before the Honorable Madeline Cox Arleo, U.S.M.J. is attached as Exhibit A.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the above statements are true and correct.

Dated: January 18, 2012

/s/ R. Scott Thompson
R. Scott Thompson

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BANXCORP, .
Plaintiff, . Case No. 07-cv-03398
vs. .
BANKRATE, INC., . Newark, New Jersey
Defendant. . January 28, 2011
.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MADELINE COX ARLEO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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14 produced by transcription service.
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1 And, Mr. Thompson, how much do you need to oppose
2 it.

3 MR. THOMPSON: Uh --

4 THE COURT: Three weeks?

5 MR. THOMPSON: Three -- three weeks.

6 THE COURT: So February 10th, one, two, three --
7 March 3rd?

8 MR. CANTER: And could we have --

9 THE COURT: March 10th reply.

10 MR. MEHL: That's fine.

11 MR. CANTER: Thank you, Your Honor. That's what I
12 was going to ask for.

13 THE COURT: We'll talk about it -- argument in a
14 minute.

15 Okay. Let's go on to the other issues.

16 MR. CANTER: Okay. So then, simultaneously with
17 that filing, Your Honor, we were going to withdraw without
18 prejudice the exclusive dealings claim because it will be
19 replead in our -- in our amended pleading. So hopefully that
20 will -- entire issue will be limited.

21 THE COURT: And that issue was related to some
22 discovery demands of -- of Bankrate?

23 MR. MEHL: No.

24 THE COURT: No?

25 MR. CANTER: No, Your Honor.

1 THE COURT: Would you be willing to clarify that?

2 MR. MEHL: Of course. Especially for the -- we're
3 not claiming that it's the price fixing that drove us out of
4 the market. It's the predatory pricing that drove us out.

5 THE COURT: Isn't that the same thing? When you
6 say predatory pricing --

7 MR. MEHL: It's not the same thing.

8 THE COURT: Tell me how it's different.

9 MR. MEHL: Actually --

10 THE COURT: Tell me how it's different.

11 MR. MEHL: I'll explain. What we're claiming is
12 that they used price fixing to lower the price first. We're
13 not claiming that they drove us out of the market by raising
14 the price. They drove us out of the market by lowering the
15 price. Below cost. For years. Until they drove us out of
16 the market, and that's actually predatory pricing as well.
17 They continued to raise the prices after they drove everybody
18 out of the market to recoup the prior losses. They had
19 losses of more than \$53 million. It's in all of their 10-Ks.

20 THE COURT: Any reason why it's not in this answer?

21 MR. MEHL: I'm sorry?

22 THE COURT: Any reason why that's not in this
23 answer?

24 MR. MEHL: I believe it is.

25 THE COURT: Where? Show me where it is.

Certification

1
2 I, SARA L. KERN, Transcriptionist, do hereby certify
3 that the 42 pages contained herein constitute a full, true,
4 and accurate transcript from the official electronic
5 recording of the proceedings had in the above-entitled
6 matter; that research was performed on the spelling of proper
7 names and utilizing the information provided, but that in
8 many cases the spellings were educated guesses; that the
9 transcript was prepared by me or under my direction and was
10 done to the best of my skill and ability.

11 I further certify that I am in no way related to any of
12 the parties hereto nor am I in any way interested in the
13 outcome hereof.

14

15

16

17

18 s/ *Sara L. Kern*

February 1, 2011

19 _____
Signature of Approved Transcriber_____
Date

20

21

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